IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 126 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VORA YUSUFALI ISMILJI POTHIWALA - Applicant(s)

Versus

VORA SABBIR ADAMALI & 1 - Opponent(s)

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Appearance :
MR RAJESH K SAVJANI for Applicant(s) : 1,
MR RC KAKKAD for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/12/2005

ORAL JUDGMENT

1. Despite the fact that the present petitioner – original plaintiff / the appellant has approached this court against the concurrent findings of the courts below, the indulgence was granted by this court as the

learned advocate appearing for the petitioner had stated that (I) his client is willing to pay a sum of Rs.5,00,000/- if the respondents herein – the tenants hand over the peaceful vacant possession of the premises to the petitioner (II) his client is ready and willing to sell of the shop (suit premises) to the tenants for a sum of Rs.5,00,000/- (III) his client is willing to give half of the shop on ownership basis to the tenants without any consideration if they vacate the half of it and give possession to the petitioner - landlord.

2. These three proposals were conveyed to the learned advocate appearing for the respondents – original tenants, who in turn communicated the same to his clients – the tenants. The tenants responded that they had shown their willingness to purchase the suit shop for a sum of Rs.1,00,000/-. In the next hearing, the learned advocate appearing for the respondents submitted that his clients have now increased the offer to Rs.1,50,000/-. The learned advocate appearing for the respondents was conveyed that the offer is not reasonable as the amount of Rs.1,50,000/- is not just and proper for the purchase of the shop for which the landlord is ready to pay him a sum of Rs.5,00,000/- to vacate. On some persuasion, the amount was raised to Rs.2,00,000/- and on some more

persuasion finally to Rs.2,50,000/-. The court found that when half the shop, the landlord is willing to give without any consideration if the tenants hand over the possession of the remaining half shop, the offer of the tenants of a sum of Rs.2,50,000/- is just and proper. The court therefore, asked the learned advocates to keep the irrespective parties present to record the amicable settlement of the dispute.

3. Today, when the matter is called out, the learned advocate appearing for the petitioner states that his client is not ready and willing to accept the aforesaid proposal. This is nothing but playing smart with the court. After making the court to invest much time in persuading the respondents to back out from one's own proposal is not proper. The matter was placed before this court on 13th September, 2005. Since then, three months have passed, on various dates proposals of petitioners were conveyed to the respondents' advocate. Today, that is, 14th December, 2005, when respondents have come to the court agreeing to one of the proposals, the petitioner has back out from his proposal. No party should back out from the offer made by him with full understanding of the same. However, the learned advocate for the petitioner having pleaded his inability to convince his clients, the

matter was heard on merits. The learned advocate Mr.Savjani invited attention of the court to the relevant discussion of the learned first appellate Judge in para Nos.15,16 and 17. He submitted that the courts below have committed an error in not believing the case of the landlord of bona fide requirement on the ground that the landlord does not have sufficient capital.

On perusal of the judgment of the courts below, the submission of the learned advocate for the petitioner is not supported by the facts on record. The ground of insufficient capital is only an additional ground for not believing the bona fide requirement. This court cannot loose sight of the fact that during the pendency of the suit, this very landlord had the vacant possession of other two shops but he let out the same for a higher sum of rent. That being so, the question of bona fide requirement cannot be considered.

4. In view of the aforesaid discussions and in view of the fact that both the courts below have recorded concurrent findings, this court finds no error committed by the courts below. Hence, This revision application fails. Rule discharged with no order as to costs.

(RAVI R TRIPATHI,J)

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